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SUBJECT: STATE INTELLECTUAL PROPERTY OFFICE MINISTER DISCUSSES CHINA
IPR ISSUES

¶1. (SBU) Summary. The State Intellectual Property Office (SIPO) will be playing a broader role in all matters relating to IPR in the upcoming Joint Commission on Commerce and Trade (JCCT) according to SIPO's Commissioner. The Ministry of Commerce will still coordinate China's overall JCCT participation. The Commissioner stated China's recently developed a National IPR Strategy which will serve as a pillar of continued economic growth. Provisions for compulsory licensing in China's newly amended patent law follow international convention and should not be cause for concern. End Summary.

¶2. (SBU) SIPO will be playing a more extensive role in all issues relating to IPR during the upcoming JCCT, SIPO Commissioner Tian LiPu told Deputy USTR Demetrios Marantis during a July 14 meeting. Tian explained that Vice Premier Wu Yi used to coordinate the eight different agencies or ministries responsible for IPR issues in the JCCT but, currently, no State Council representative fills that role. As a result, SIPO will coordinate. MOFCOM will still be responsible for overall JCCT coordination, he emphasized. Tian further explained China had recently launched an inter-ministry IPR commission which he will lead that consists of 28 different agencies or ministries.

¶3. (SBU) SIPO's primary function is patent examination, he continued. By the end of 2009, his Ministry will have over 9,000 employees. Internationally, "only the U.S. Patent and Trade Office is bigger," Tian joked.

China's National IPR Strategy

¶4. (SBU) The Chinese government in 2008 unveiled its National IPR Strategy which will serve as one of the pillars to China's continued economic growth, Tian boasted. Consisting of both a five-year plan and explicit goals to achieve by 2020, Tian said the plan does not rely solely on governmental regulation. Rather, it seeks to involve industry and Chinese consumers in tamping down on IPR violations. Asked about the five-year plan, Tian said China would seek to improve IPR legislation, bolster enforcement, and raise the public's awareness on the importance of IPR protection. Regarding public awareness, Tian cited a recent study by Tsinghua University in which only 0.7% of Chinese consumers polled were able to define the word "copyright." "We've got a lot of work to do," Tian laughed.

The Amended Patent Law

¶5. (SBU) Tian said the State Council had recently passed a newly revised patent law that will come into effect October 1. According to Tian, the public, interested parties and even foreign governments and industry were invited to comment on the proposed revisions during the public comment period. "We were fully transparent," he said. Currently, his Ministry is working on the implementing regulations for the revised law which he also hopes the State Council will promulgate by October 1.

¶16. (SBU) Asked about the provision for compulsory licensing of patents within the new law, Tian explained the provision follows international standards as outlined in the Paris Convention and uses the same legal terms as patent laws in the U.S. or E.U. Compulsory licensing provisions have been contained in China's patent law dating back to 1985 but have never been invoked. Despite the revisions to the law, the guidelines published in 2006 with regards to compulsory licensing will remain the same, he said. Industry has no need to worry about those provisions, Tian opined.

Copyright Law Amendments - Maybe 2010?

¶17. (SBU) Regarding timing for revision of the copyright law, Tian stated it is in the "pre-legislation" stage. The relevant parties are in the process of collecting information and studying the best way to revise the law. In order to get it amended, however, it needs to be on the State Counsel Legislative Affairs Office calendar, he explained. Tian predicted this would happen in 2010.

¶18. (SBU) Asked about whether SIPO would have a role in the State Administration of Industry and Commerce (SAIC) abuse of dominance investigations involving possible anti-competitive effects of parties' IPR use, Tian stated IPR cases are not covered by China's new Anti-Monopoly Law as IPR is itself a kind of monopoly. SIPO would have jurisdiction over any such cases.

¶19. (U) Ambassador Marantis has cleared this cable.